-- say, four years after general implementation of Sections 251(c) and 271. The sunset does not mean that the Commission will not continue the scheme, either in whole or in part (e.g., with regard to the local loop). It does mean, however, that the Commission is most serious about its examination, and that it will not simply allow regulation to continue almost willy-nilly, as has been its pattern in the past (e.g., see regulation of AT&T prices long after they should been deregulated).[25]

D. Consider eliminating depreciation regulation.

This issue has been the subject of extensive filings in 1997, and therefore we will discuss it only briefly here. In the past, regulation has often called for inordinately long depreciation periods to keep local residential rates low (which in turn has raised the problem of embedded, stranded cost in a competitive environment -- see Section E, infra). Surely regulation should not continue such a pattern in the emerging competitive environment, where prices based on forward-looking costs are the norm. Depreciation now must reflect the market, and depreciation rates will be based on economic decisions related to dynamic technology trends. In the circumstances, we suggest that the Commission consider eliminating depreciation regulation; significantly, price caps, with their built-in productivity factor, will continue to protect consumers as to basic service charges.

E. Deal effectively with the embedded (stranded) cost issue.

The Commission has recognized the need to deal with the issue of embedded (stranded) costs, if shown to be related to regulatory mandates that, for example, required

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[25] The Commission will have to act on forbearance petitions under the timetable in

unduly long depreciation periods for reasons of social policy. But the Commission has failed to address this issue, first in the Interconnection Report, and has continued to avoid it, saying that it will deal with the issue in a separate, forthcoming proceeding. The Commission has yet to initiate that proceeding, and it is now almost two years after the Act's passage.

Contrast that treatment with the Government's action in the electric field upon the introduction of competition and deregulation. The Economic Report of the President, February 1996, deals extensively with the stranded costs in the electric field, and concludes (at 187-88) that:

> ...recovery should be allowed for legitimate stranded costs. The equity reason for doing so is clear, but there is also a strong efficiency reason for honoring regulators' promises. Credible government is key to a successful market economy, because it is so important for encouraging long-term investments. Although policy reforms inevitably impose losses on some holders of existing assets, good policy tries to mitigate such losses for investments made based on earlier rules, for instance, by grandfathering certain investments when laws and regulations change.

FERC and the state commissions have begun following the above policy.[26]

There may of course be distinctions between the electric (and natural gas) field and the local telecommunications industry.[27] But the short answer is that the Commission must come to grips with this difficult problem and resolve it this year. In light of the

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Commission to conduct biennial reviews of its regulations beginning this year. APT presents the above sunset provision as a specific review capstone for this important issue.

[26] See, e.g., *The Wall Street Journal*, Nov. 20, 1997 "Massachusetts to Deregulate Electric Utilities" (allowing the utilities to recover all of their stranded costs, "estimated to total as much as $10 billion").

[27] Stranded costs in the electric industry relate to uneconomic generation, rather than obsolete transmission and distribution infrastructure, or uneconomic investments as in the telecommunications industry. Distinctions may also be drawn in the role technology plays in the respective industries. Restructuring in both industries, however, is triggering stranded costs.

presidential admonition, present actions dealing equitably with costs incurred to meet regulatory requirements, may influence future investment by the ILECs, which have not been able to recover such costs in the new environment. Any process to deal with stranded costs should be open and accountable, with the costs recovered in a competitively neutral manner. That means that the ILEC should have the burden of demonstrating both the occurrence of costs to meet social policy regulatory requirements and the inability to recover those costs in the past and now in the new environment. Clearly, the states have a very important role in this area, and therefore the Commission should consult closely with the states.

F. Bring the ISPs within an access scheme that imposes reasonable charges that will not inhibit continued strong growth of the Internet -- yet will afford incentives to invest and build high-capacity, high-speed, packet-switched networks.

Again we will not offer extended discussion on this topic. The Commission is familiar with the problem, including its political ramifications. APT has filed comments fully treating the issue.[28] In that pleading, we stressed our recognition of the great importance of the Internet to our economy and to the quality of life, including democratic processes. But it is no favor to the Internet-based industries, or more important to the national interest, to continue skewing the incentives for investment in networks that the industry strongly and urgently needs to foster the continued growth of the Internet. Former Chairman Reed Hundt describes his vision of the Internet as

> ... a high-speed, congestion free, always reliable, friction free, packet switched, big bandwidth, data friendly network that is universally available, competitively priced, and capable of driving our economy to new heights. We need a data

[28] See Comments of APT, filed March 24, 1997 in CC Docket No. 95-263.

> network that can easily carry voice, instead of what we have today, a voice network struggling to carry data.[29]

In the present situation, where the ISPs have a "free ride" because of the ISP exemption from access charges, there is no incentive to invest or build such a network. Thus, a recent trade press account of AT&T Vice President Mark Rosenblum's testimony to the Commission, stated that

> ...while not requiring [Internet providers] to pay in [the] past allowed [the] industry to gain a foothold, [the] market is now strong, and development of new technologies is suffering ... AT&T among others would jump to invest in broadband, packet-switched data networks if they thought ISPs would pay to use them. But ... since they can access [the] traditional switched network free, they have no incentive to switch.[30]

The solution is not to bring the ISPs within the present IX access charges. Instead, there must be a process to fashion an ISP charge that is reasonable and acceptable to the Internet industry -- yet will end the "free ride" and give sufficient incentive to build the above-described new networks. We suggest that the Commission engage in a negotiated rulemaking, bringing together the interested entities, and try to forge an equitable resolution consistent with the public interest. The Commission should not let the present unsatisfactory situation continue to fester, but instead should act as a catalyst for a politically sound resolution that will serve the national interest and all the parties as fairly as possible.

G. Encourage price reform, pricing flexibility, and retail price deregulation.

Again, because of the Commission's familiarity with this topic, the discussion will be brief. New entrants naturally respond to the economic signals. Today those signals,

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[29] Speech of Reed Hundt before the Institute of Electrical and Electronics Engineers, "The Internet: From Here to Ubiquity," Aug. 26, 1997.

[30] *Communications Daily*, December 18, 1997 at 3.

stemming from price regulation that sets residential prices far below business prices without sufficient cost justification, have been a factor contributing to market forces which are skewing competitive entry and investment very largely toward the business market.[31] Where states like New York have instituted reforms to close this gap and bring residential rates more in line with costs, competitors have responded by beginning to offer local service to residential subscribers. Id.

The 1996 Act is squarely based on letting technology and the market work its way, but from APT's perspective, the premise has to be that a strong universal service system is in place. Greater pricing flexibility and deregulation in a market regime become acceptable when (a) affordable access to services through the new "safety nets" for telecommunications are fully operational at both the federal and state levels, (b) explicit funding mechanisms cover (with provision for upgrading as envisioned in the Act) at least the basic services defined in the FCC's "universal service" decision, including the extension of the funding mechanism to support advanced services for schools, libraries, and health care, (c) the funding level is entirely adequate for the services subsidized, and (d) the funding mechanisms extend to both low-income consumers and those in high-cost areas.

Pricing reform, implemented gradually to give the market sound economic signals, is clearly called for if the Act's promise is to be achieved. While the states have a very large role in this respect, the Commission should join the more progressive states in leading the way to reform the pricing signals being given to newcomers.

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[31] See op. cit n.6., Kellog & Huber at 25, 41-42. We note that incentives to serve residential customers increase as carriers gain the right to offer vertical services.

Similarly, if the ILEC is to remain in a healthy position to modernize its network, the Commission must enable it to compete effectively with the new entrants, and that in turn brings up the necessity of allowing pricing flexibility for the ILEC. Regulators should permit the ILEC to match the prices of the facilities-based CLEC, so long as it can reasonably show that its matching price is not below cost (i.e., predatory pricing, something that is rarely found as the Supreme Court has noted in antitrust cases).[32] Most significantly, they should allow the ILEC to match the prices charged by competitors relying very largely on the UNE platform.

Indeed, the latter form of competition suggests the strong possibility of retail price deregulation. If the UNE platform remains regulated as to its cost (e.g., TELRIC or some similar forward-looking cost scheme of the state), and CLECs using that platform offer a service widely available and taken by a significant percentage of area subscribers, it makes no sense to continue retail price regulation for the ILEC. Clearly, in such circumstances the UNE platform constitutes a real check on the retail prices that the ILEC can charge. Allowing such retail price deregulation is not only sound policy, but also constitutes added incentive for the ILEC to comply fully and more rapidly with the UNE requirements of the Act and the FCC.

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[32] See, e.g., Matsushita Electric Industrial Co., et al. v. Zenith Radio Corp. et al., 475 U.S. 574, 588-89, 89 L.Ed 2d 538, 553-54 (1986).

III. THE COMMISSION SHOULD ALSO ADOPT POLICIES AFFIRMATIVELY TO PROMOTE INFRASTRUCTURE INVESTMENT FOR ADVANCED CAPABILITIES.

In Section II we addressed the policies needed to remove barriers to advanced telecommunications investments. We turn now to discuss affirmative policies to encourage such investments.

Consistent with the commitment in Section 706 and the Act, our focus continues to be on the marketplace as the main force for competitive investments. We are painfully aware, however, of the market's failure to allocate resources appropriately.[33] In deploying advanced infrastructure, those failures facilitate electronic segmentation of society in a way that undermines implementation of Section 706 (frequently referred to as "electronic redlining"). Further, communities across the nation are reeling from the market-driven "electronic redlining" that is frustrating their efforts to promote universal deployment of advanced telecommunications capability.

In reality, the competition that is resulting from industry restructuring is simultaneously circumscribing the price competition that the Commission's policies are fostering. It is an industry of "convergent technologies" in which companies are seeking to realize substantial economies of scale and scope. Capturing those potential efficiencies is driving much of the aggregation of market power through mergers and

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[33] We are mindful that the desirable efficiencies of price competition also result in major allocational failures when the realities of income distribution and market power impact these efficiencies. The Commission cannot soundly "leave it to the marketplace," on the presumption that interfering with competitive market decisions is counter-productive. Such an approach is unacceptable in view of the Commission's responsibility to promote ubiquitous deployment of advanced telecommunications capability in a market-driven regulatory regime.

acquisitions. Therefore, as the Commission implements Section 706, we urge it to recognize that concentrations of market power, whether existing in the current structure or enhanced by mergers and acquisitions, generate much of the capital for "competitors" to invest in upgrading infrastructure.[34]

Economists may argue over allocative efficiencies versus innovative efficiencies in connection with the structure of markets and competition. But what is apparent to almost everyone is that (a) imperfect competition, to say the least, is likely to prevail in the restructured telecommunications industry, (b) market power accumulates capital for investments, and (c) there is no assurance that companies accumulating capital will invest it in accordance with Section 706 to deploy advanced telecommunications capability to all Americans.

Accordingly, we offer the following recommendations both to help stimulate advanced infrastructure investments in a market-driven industry and to overcome electronic segmentation that impedes implementation of Section 706.

A. Adjust the productivity index to accelerate ILEC investment in infrastructure investment for advanced telecommunications capabilities.

This recommendation concerns the productivity factor in the price cap formula that applies to local exchange access fees of ILECs (paid by inter-exchange carriers) under the FCC's jurisdiction, and, as a precedent, to the local exchange access rates (paid directly by consumers) within the states' respective jurisdictions. We urge the Commission (and state commissions that may follow the Commission's leadership) to

[34] Further, we caution the Commission against embracing any static concept of market-driven allocational efficiency that fails to recognize market power as the potential source of substantial investment capital for the advanced infrastructure envisioned in Section 706.

accelerate ILEC investment in infrastructure for advanced capabilities by adjusting the productivity index used in the price cap formula to reflect a clear and convincing showing by the ILEC of a program to accelerate such investment. The required showing should demonstrate how the increased rate of investment is contributing to the deployment of advanced telecommunications capability to both low-income communities and areas typically underserved or "marginalized" because of perceived deficiencies in effective demand for such services. It would be up to the ILEC to make that showing both initially and in annual reports demonstrating compliance with the program schedules (with either termination or reduction of the adjustment resulting if the ILEC fails to meet the schedule). It would of course also be up to the ILEC to choose the technology or technologies that it would utilize to achieve the advanced capabilities (e.g., HFC, fiber, wireless, ADSL).

In considering this recommendation, the Commission should recall that price-cap regulation referenced in Section 706 displaces the cost-of service regulation of the past, where investments were subject to direct regulatory authority. Under the price-cap regulatory regime, the productivity factor becomes a critically important market-oriented policy option for stimulating investments in keeping with the advanced universal service goals of the Act. The amount of the productivity index adjustment would depend on the showing made. The Commission and states could cap it at 0.5%. That figure (0.5%) was a supplemental amount the Commission added to the index to arrive at 6.5%. Its purpose was to assure that the higher efficiencies achieved by the price-capped LECs were definitely passed on to consumers. Since that is its rationale, regulators could soundly

shift it to accelerate investment in advanced capabilities "for all Americans" under Section 706 -- a great benefit to the consumer.

The FCC's application of the productivity factor as an investment incentive could be an important precedent for states to follow. Many states with price-cap regulation employ a productivity factor in setting rates for basic services of dominant local exchange carriers -- ILECs. Some states have abandoned or suspended the productivity factor in the price cap formula. Whatever the situation, states need encouragement to view the productivity factor as we are urging the Commission to view it. We encourage the FCC formally to seek the coordination of its own policies with relevant state regulations, focusing on investment incentives to implement the commitment to ubiquity in Section 706.

Some may argue that the proposal constitutes government "industrial policy" and that the government does a poor job of picking technological winners. But under the proposal the government is not selecting the technological winner; it is keeping faith with consumers and with Section 706, which requires a technologically neutral acceleration program. Further, and most important, this is not an agency program; rather, it is the agency following the directive of Congress, which it must do. The Act explicitly refers to the use of price caps to promote timely deployment of investment in infrastructure for advanced capabilities. There is a need for immediate action if the nation is to obtain the ubiquitous high-speed, high-capacity networks that will allow full utilization and growth of the Internet.

Finally, there is a precedent for the proposal, and indeed a need for it in order to level the playing field. The Commission has adopted a "network upgrade" policy for

cable operators.[35] The Commission has implemented this policy by approving social contracts that allow a pricing scheme based in substantial part on cable companies' commitment to modernize their systems. Thus, to use but one very recent example, the Commission in authorizing the social contract for Comcast,[36] stated as background that it would consider upgrade incentive plans that would

> permit an operator to enter into a social contract with its customers under which the operator would be given substantial flexibility in setting rates for new regulated services it introduces...[R]ates for existing service would remain "stable and reasonable," at levels no higher than in effect before the social contract was implemented or no higher than permitted by the benchmark/price cap approach...These social contracts would remain in effect for a fixed period and would offer operators an opportunity to earn higher profits as an incentive for upgrading their cable systems and introducing new and improved regulated services. In the ...1996 Act, Congress sought to encourage the rapid deployment of advanced telecommunications services and technologies for the benefit of all Americans. These are the goals that the Commission's upgrade incentive policy was designed to fulfill.[37]

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[35] See In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 93-215, FCC 94-39, at paras. 295-304. This option allowed cable operators to justify rate increases "for significant upgrades requiring added capital investment, such as bandwidth capacity and conversion to fiber optics, and for system rebuilds." See FCC Form 1235 at 1. Further, the Commission determined that it would implement Section 706 for OVS operators "that can demonstrate a need for additional deregulatory measures to successfully deploy advanced telecommunications services to all consumers." Second Report and Order, In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996 -- Open Video Systems, CS Docket No.96-249 at paras. 1250-252.

[36] In the Matter of Social Contract for Comcast Cable Communications, FCC 97-375, Oct. 10, 1997 at para. 3.

[37] The Commission approved a social contract that required Comcast to upgrade its cable systems by March 31, 1999, with the result that 80% of the company's subscribers will be served by a system of at least 550 MHz; 60% with a system of 750 MHz; 80% of the subscribers will be served by a system that will use fiber to transport signals from the headend to the neighborhood nodes; and 80% of the systems will use addressability or other technology for interactive subscriber services and to enhance choice.

APT strongly supports the Commission's effort to implement Section 706 in the cable area. But it makes no sense for the Commission not to make a similar effort and adopt a similar program for the ubiquitous ILEC networks.

B. In approving mergers and acquisitions, the Commission should impose conditions that are consistent with its pro-active policies to implement Section 706.

Approval requests for mergers and acquisitions are becoming a regular occurrence as the drive to aggregate and consolidate market power continues with the "competitive" restructuring of telecommunications. The Commission's approval policies need to be both even-handed and as consistent as possible with its responsibilities to implement Section 706.

As indicated earlier, some proposed mergers and acquisitions appear focused on increasing the capacity of the merged entity to invest in the business community and the high-end of the market. This focus is to the apparent exclusion of building facilities and the advanced capability to serve residential consumers in the local loop, let alone those whose communications and information needs are given short shrift in the ordinary operation of markets. APT has recently argued that such emphasis is totally inconsistent with the Commission's obligations under Section 706.[38]

It is not unprecedented for agencies that regulate mergers and acquisitions to establish conditions for approval which they can monitor. For example, the California Public Utilities Commission has required establishment of technology diffusion funds to support the kinds of community-driven partnerships in demand aggregation

[38] See Response of the Alliance for Public Technology, In the Matter of Amended Applications of WorldCom, Inc. and MCI Communications Corporation for Transfer of

recommended in Section III. C. below. It is equally appropriate for the FCC to impose merger conditions, which strive to balance incentives to deploy infrastructure upgrades where the proposed transactions significantly increase investment capacity.

C. Establish a federal/state policy framework for encouraging community driven demand aggregation for technology applications, which provide a "demand pull" basis for advanced infrastructure investments to the home.

FCC action to accelerate infrastructure investments, as suggested in recommendation III.A., above, requires a complementary policy to develop a "demand side" basis that attracts competitive investments.

We all know of the harsh ways in which the financial community deals with the stock values of companies that invest without reasonable expectations of a competitive return on the capital invested. This is not to be lost in the policy deliberations of the Commission -- particularly where the commitment of Section 706 extends to making advanced telecommunications capability accessible to people and small businesses in marginalized communities. Experience has shown that, for various reasons, the "demand pull" to support investments in such communities is weak. The same is true where the commitment extends to rural areas, which are low among competitors' priorities.

This is not speculation. It is a matter of economic reality playing out in many parts of the country. Projects to saturate large areas with high-capacity capability have been or are being abandoned in favor of infrastructure upgrades, which have a readily exploitable demand base. For example, several years ago with great fanfare and demonstration of public trust, Pacific Telesis launched a $17 billion investment strategy for accelerated deployment of high-capacity, hybrid fiber/cable infrastructure throughout

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Control of MCI Communications Corporation to WorldCom, Inc., CC Docket No. 27-

its service area. Within the past several months, the company announced that it had to abandon the investment strategy, in large part because the insufficient demand for telecommunications applications did not justify the investment.

"Build it and they will come" may make sense as a public infrastructure investment, but the concept is not compatible with the marketplace. Significantly, with the recent launching of new DSL service, the new high-capacity strategy of Pacific Bell appears to embrace deployment of data networks that utilize investments in copper wires more efficiently, but which also depend greatly on "demand pull" for their deployment. To reach the homes of people in marginalized communities, and many rural areas, the incentives suggested in recommendation III.A., above, will help, but the investment bottom line is that there must be a policy framework to nurture effective demand where it does not exist sufficiently to attract investments.[39]

In short, APT firmly believes that even as the Commission develops a regulatory scheme that promotes infrastructure investments in accordance with Section 706, "reasonable and timely" deployment of advanced telecommunications capability prescribed in the Act will not occur unless telecommunications companies and service providers perceive that sufficient demand exists. The Commission, therefore, must take decisive and creative steps to ensure that its policies support the development of community-driven mechanisms, especially partnerships of community-based

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211 (Jan. 26, 1998).

[39] The Telecommunications and Information Infrastructure Assistance Program ("TIIAP") administered by the National Telecommunications Information Administration provides funding to non-profit groups and state and local government entities to extend information and technology to underserved communities. TIIAP is an example of a federal initiative to help such communities utilize technology to serve their needs, and thereby lay the foundation for demand for these useful applications.

organizations ("CBOs") with competitive providers. These partnerships should focus on applications development and deployment addressing "life's needs" -- in particular applications that help to raise income levels of marginalized communities.

We believe this nurturing of community-based partnerships and other mechanisms should take the form of a federal/state framework for policy implementation that recognizes the essential role communities play in making the telecommunications marketplace work for everyone. In keeping with the concept of devolving policy implementation, the central purpose of such a framework is to bring additional resources to urban and rural municipalities and regional bodies, which feel compelled by the competitive environment to develop telecommunications policies of their own (within the limits of their authority).

We summarize below the commitment to devolution in policy to implement our recommendations:

> Establish a federal/state policy framework to encourage, facilitate, and support community/provider partnerships and related market-oriented processes which are designed to (a) aggregate effective demand for community-based applications and information technologies, and (b) build a strong "demand pull" base for advanced infrastructure investments to the home.

Communities are currently exploring their options for achieving ubiquitous deployment of advanced technology infrastructure and overcoming "electronic redlining" problems. Under the 1996 Act, they are well aware that they cannot prevent a competitive environment from evolving. Some are exploring municipalization options, but the main thrust of community telecommunications policies is to work with competitive providers, community institutions, and CBOs in market-oriented partnerships. And they need help from policymakers.

The promise that competitive markets will drive prices to "marginal costs," making information products and services more affordable, is welcomed, even if it is often more theoretical than real for low-income communities. For municipalities and public agencies dealing with the reality of limited investment motives in their communities, however, competitive pricing theory and achievements are simply insufficient.

Cutting through much of the hopelessness and confusion that prevails, APT's recommendation seeks to build on the experience of community telecommunications projects and demonstrations funded by NTIA/TIIAP, other governmental agencies, foundations and the communications industry itself. There exists a plethora of positive experience from these projects that validates the power of advanced technology applications as tools to improve significantly the quality of life for everyone.

The effectiveness of technology applications has been and continues to be demonstrated in critical areas of community-building. For example, such applications help to: develop entrepreneurial skills and small business opportunities; enhance home and school learning environments by overcoming inequities between them; vastly expand the capacity of libraries to provide community access to advanced communications and information technologies; establish community-based technology application centers for hands-on learning, particularly technology skills; improve operation of labor markets by enhancing job training and placement; deliver services of CBOs, community institutions and government; provide effective health care; and significantly, improve the quality of life for people with disabilities by advancing independent living goals and economic opportunities.

Individually, and in the aggregate, these impressive results clearly demonstrate the capacity of advanced technologies for community-building. Such results, however, are falling far short of effectively aggregating community demand to a level that drives infrastructure investment to the home.

APT and its constituents are learning the necessity of forging a compatible relationship of community-building interests with the market-building interests and instincts of competitive providers if communities, especially low-income communities, are to become effective drivers for the deployment of advanced networks. This recommendation to establish a federal-state framework promotes that compatibility. The process essentially involves providing community options for: (a) developing an applied base of technology literacy, especially among community leaders in CBOs; (b) diffusing that applied base through wide-spread community involvement in developing applications that address the basic life needs described above; and (c) through partnership arrangements, opening new profitable markets for community-driven aggregation of demand.

The targeted discounts for schools, libraries and health care raise this process to a whole new level of urgency. Beyond the intrinsic value of applying advanced technology tools in certain areas of community life, the policy significance of the discounts lies in the potential of recipient institutions to diffuse technology throughout the communities they serve. To be effective in this role, however, requires broad-based community involvement to buttress the "demand pull" of infrastructure deployment.

The community involvement is critically important in areas where larger discounts reflect high poverty levels. CBOs need to be brought into working

relationships with the institutions involved both to broaden community partnership development and determine actual use of the subsidies in deploying technology to serve the broader community -- for example, to link schools and home-learning environments with the outreach commitments of libraries and to enhance health care for children.

Rather than encouraging "institutional domains" of high technology, the discounts must become vehicles for solid community-building. From our perspective, the Commission should have a strong public policy interest in making sure that discounts, which are inherently funded by the industry, function as drivers to build out the last mile of advanced infrastructure capability on a technology-neutral basis.

All of this falls within our recommendation for an evolving federal/state policy framework for confronting major "demand pull" problems in market-driven infrastructure development and deployment. We recognize, however, that our proposal will stir controversy. Making resources available to communities requires funding. Subventing funds to support local communities without creating a resource-devouring bureaucracy is a challenge, but it is one that may hold the fate of Section 706's commitment to the nation.

A number of states are alert to the magnitude of the problems that communities are confronting as market forces are being unleashed. Technology diffusion funds are being created in one form or another with the blessings of regulators. Task groups of stakeholders are convening to determine ways within a market-oriented regulatory regime to expand the capacity of the marketplace to respond to the issues we are raising.

It is now time for the Commission to lead jointly with the states to extend a helping hand to communities developing their own telecommunications policies. By no

means can we assume that those policies will be compatible with the Commission's and of the various states without making it feasible for them to become involved in the implementation of Section 706. Establishment of a task force to develop specific implementing options for the Commission's consideration within a specified time frame would demonstrate the Commission's commitment to our recommendations.

The Commission's mandate to the task force should give high priority to implementing options that encourage "voluntarism" in developing community-provider partnerships and related market-oriented processes. Regulatory forbearance might be an effective way to encourage competitive providers to enter into the partnerships. For example, where social compacts evolving out of the partnerships nurture community-based applications requiring high-capacity bandwith to the home, it would be within the purview of the Act to grant regulatory waivers to facilitate such activities. The recommended federal-state framework would greatly enhance the coordination of regulatory forbearance policies that focus on community aggregations of demand so critical to the implementation of Section 706.

With respect to funding, we urge the Commission to recognize the appropriateness of industry-based funding for this initiative. Distinguished, but related to the internalized funding of safety nets for universal access to basic services, the funding for the proposed initiative is focused on market/community building. Such cooperation tends to minimize the costs of safety nets for basic services as the feasibility of upgrading them is enhanced. Further, internalized funding of this recommendation would be completely consistent with the intent of using targeted discounts for advanced services as technology-diffusion bridges to the community.

Clearly, internalized industry funding here would increase the capacity of the marketplace to distribute more broadly the benefits of the new technologies and to fend off future regulatory intervention to prevent foreseeable allocative failures of the marketplace. Present industry support of community efforts in technology diffusion is a clear indication that competitors understand the limitations of unilateral efforts to aggregate demand in building markets. They have a common interest in community-driven aggregation of demand that enables "all ships" in the marketplace to rise together.

CONCLUSION

APT strongly supports the effort to introduce competition in local telecommunications markets. Competition is the norm in the U.S., because it spurs innovation, efficiencies, and drives prices to marginal costs. But APT fears that the Commission's present policies will result, for a very considerable period of time, largely in retail price competition for residential customers -- not facilities-based competition. Since only the latter can help accomplish the vital goal of Section 706, the Commission must immediately adopt new policies to accelerate the deployment of infrastructure. Its prompt, deliberate action will bring advanced telecommunications capabilities to all Americans, so needed for efficiencies and to enhance the quality of life by improving

education, health care, and the democratic process. Accordingly, APT urges the Commission to issue, as quickly as possible, a NOI and NPRM along the lines suggested in the above discussion.

Respectfully submitted,

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February 18, 1998

CERTIFICATE OF SERVICE

I, Ginger Beverly, a secretary for Alliance for Public Technology, hereby certify that on the 18th day of February, 1998, copies of the foregoing "Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act" were hand delivered to:

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ATTACHMENT A

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES. 47 USC 157 note.

(a) IN GENERAL.—The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) INQUIRY.—The Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) DEFINITIONS.—For purposes of this subsection:

(1) ADVANCED TELECOMMUNICATIONS CAPABILITY.—The term "advanced telecommunications capability" is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) ELEMENTARY AND SECONDARY SCHOOLS.—The term "elementary and secondary schools" means elementary and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

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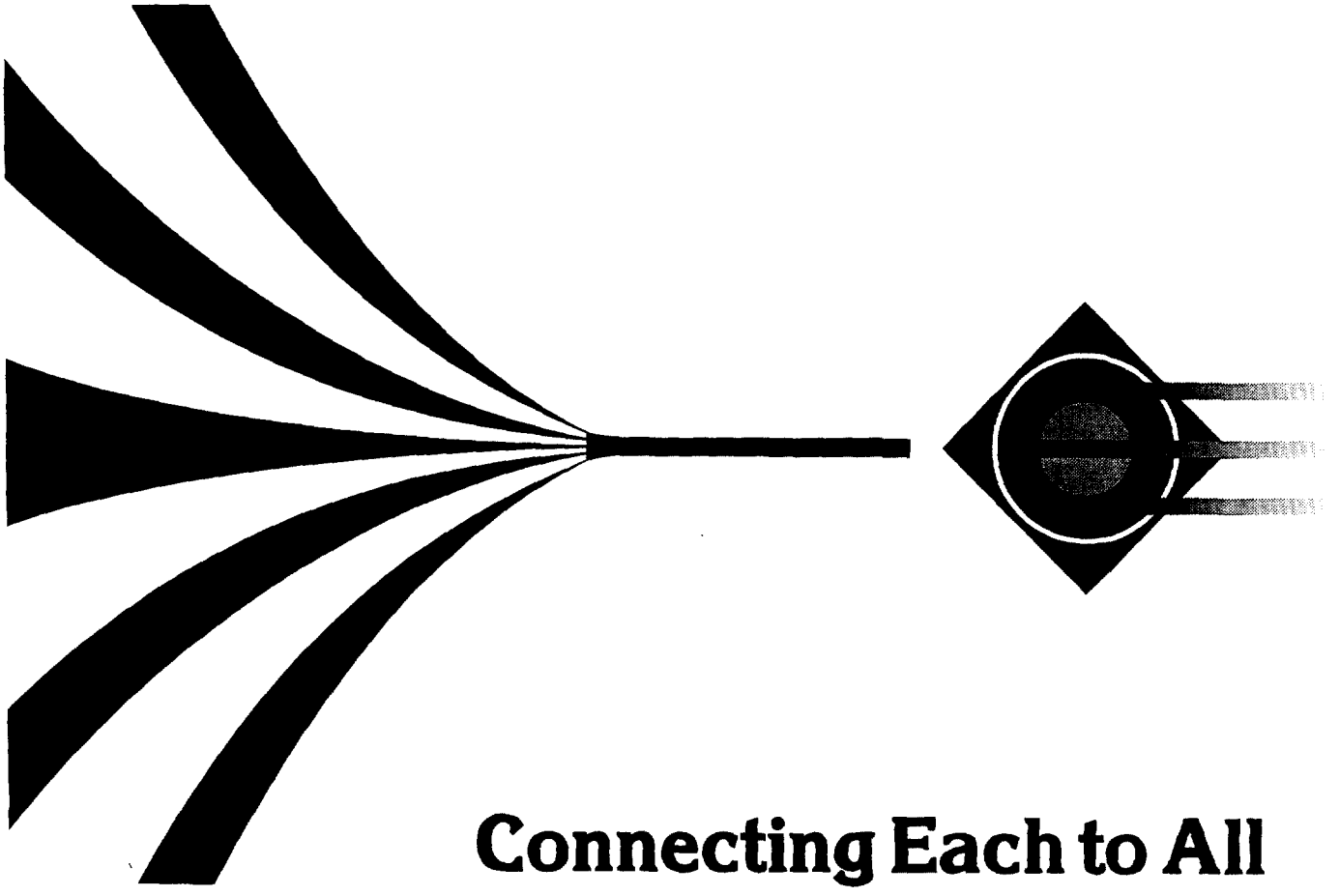
Principles to Implement the Goal of Advanced Universal Service



Connecting Each to All